

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN ASSEMBLY APRIL 19, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2100

**Introduced by Assembly Member Laird
(Coauthor: Assembly Member Mullin)**

February 17, 2006

An act to amend Sections 1365 and ~~1365.2.5~~, *1365.2.5*, and *1365.5* of, and to add ~~Sections 1365.4 and~~ *Section* 1365.6 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2100, as amended, Laird. Common interest developments: reserve funding.

(1) Existing law requires the association of a common interest development to prepare and distribute to all members a pro forma operating budget that includes, among other things, *a summary of the association's reserves*, a statement regarding the mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, and a statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

This bill would require the pro forma operating budget to also include *the current deficiency in reserve funding expressed on a per unit basis*, a statement as to whether the board of directors of the association has determined to defer or not undertake repairs or

replacement of any major component, and a *statement* whether the association has any outstanding loans, as specified. ~~The~~

(2) *Existing law requires the board of directors, at least once every three years, to conduct a visual inspection of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, as specified. The study is required to include, among other things, an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the major components identified, after subtracting total reserve funds as of the date of the study.*

~~This bill would require the board of directors of the association to adopt study to also include a reserve funding plan that indicates how the association plans to fund the reserve account annual contribution to meet the association's obligation for the repair and replacement of all major components, as specified. This bill would require that, if the board of directors determines an assessment increase is required to fund the reserve funding plan, any assessment increase the board adopts shall to be approved in a separate board action from the action to adopt a reserve funding plan. The bill would require, commencing January 1, 2009, a summary of the reserve funding plan to be included in the pro forma operating budget distributed to all members.~~

(2)

(3) Existing law requires the association of a common interest development to distribute a disclosure regarding assessment and reserve funding in a certain form.

This bill would revise that form, as specified.

(3)

(4) Existing law provides that no contract or other transaction between a corporation and one or more of its directors, or any corporation, firm, or association in which any of its directors has a material financial interest or are directors thereof, is either void or voidable because the director or directors, or the other corporation, firm, or association, are parties or present at the meeting of the board or a committee that authorizes, approves, or ratifies the contract or transaction, if certain disclosures are made and other specified conditions are met. Existing law also provides that interested or common directors may be counted in determining the presence of a quorum at a meeting of the board or a committee that authorizes, approves, or ratifies a contract or transaction.

This bill would make these provisions applicable to any contract or other transaction authorized, approved, or ratified by the board of directors of an association or a committee of the board, regardless of whether the association is a corporation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365 of the Civil Code is amended to
2 read:
3 1365. Unless the governing documents impose more stringent
4 standards, the association shall prepare and distribute to all of its
5 members the following documents:
6 (a) A pro forma operating budget, which shall include all of
7 the following:
8 (1) The estimated revenue and expenses on an accrual basis.
9 (2) A summary of the association's reserves based upon the
10 most recent review or study conducted pursuant to Section
11 1365.5, based only on assets held in cash or cash equivalents,
12 which shall be printed in boldface type and include all of the
13 following:
14 (A) The current estimated replacement cost, estimated
15 remaining life, and estimated useful life of each major
16 component.
17 (B) As of the end of the fiscal year for which the study is
18 prepared:
19 (i) The current estimate of the amount of cash reserves
20 necessary to repair, replace, restore, or maintain the major
21 components.
22 (ii) The current amount of accumulated cash reserves actually
23 set aside to repair, replace, restore, or maintain major
24 components.
25 (iii) If applicable, the amount of funds received from either a
26 compensatory damage award or settlement to an association from
27 any person or entity for injuries to property, real or personal,
28 arising out of any construction or design defects, and the
29 expenditure or disposition of funds, including the amounts
30 expended for the direct and indirect costs of repair of
31 construction or design defects. These amounts shall be reported

1 at the end of the fiscal year for which the study is prepared as
2 separate line items under cash reserves pursuant to clause (ii).
3 Instead of complying with the requirements set forth in this
4 clause, an association that is obligated to issue a review of their
5 financial statement pursuant to subdivision (b) may include in the
6 review a statement containing all of the information required by
7 this clause.

8 (C) The percentage that the amount determined for purposes
9 of clause (ii) of subparagraph (B) equals the amount determined
10 for purposes of clause (i) of subparagraph (B).

11 (D) *The current deficiency in reserve funding expressed on a*
12 *per unit basis. The figure shall be calculated by subtracting the*
13 *amount determined for purposes of clause (ii) of subparagraph*
14 *(B) from the amount determined for purposes of clause (i) of*
15 *subparagraph (B) and then dividing the result by the number of*
16 *separate interests within the association, except that if*
17 *assessments vary by the size or type of ownership interest, then*
18 *the association shall calculate the current deficiency in a manner*
19 *that reflects the variation.*

20 (3) A statement as to all of the following:

21 (A) Whether the board of directors of the association has
22 determined to defer or not undertake repairs or replacement of
23 any major component with a remaining life of 30 years or less,
24 including a justification for the deferral or decision not to
25 undertake the repairs or replacement.

26 (B) Whether the board of directors of the association,
27 *consistent with the reserve funding plan adopted pursuant to*
28 *subdivision (e) of Section 1365.5*, has determined or anticipates
29 that the levy of one or more special assessments will be required
30 to repair, replace, or restore any major component or to provide
31 adequate reserves therefor. If so, the statement shall also set out
32 the estimated amount, commencement date, and duration of the
33 assessment.

34 (C) The mechanism or mechanisms by which the board of
35 directors will fund reserves to repair or replace major
36 components, including assessments, borrowing, use of other
37 assets, deferral of selected ~~replacement~~ *replacements* or repairs,
38 or alternative mechanisms.

39 (D) Whether the association has any outstanding loans with an
40 original term of more than one year, including the payee, interest

1 rate, amount outstanding, annual payment, and when the loan is
2 scheduled to be retired.

3 (4) A general statement addressing the procedures used for the
4 calculation and establishment of those reserves to defray the
5 future repair, replacement, or additions to those major
6 components that the association is obligated to maintain. The
7 report shall include, but need not be limited to, reserve
8 calculations made using the formula described in paragraph (4)
9 of subdivision (b) of Section 1365.2.5, and may not assume a rate
10 of return on cash reserves in excess of 2 percent above the
11 discount rate published by the Federal Reserve Bank of San
12 Francisco at the time the calculation was made.

13 The summary of the association's reserves disclosed pursuant
14 to paragraph (2) shall not be admissible in evidence to show
15 improper financial management of an association, provided that
16 other relevant and competent evidence of the financial condition
17 of the association is not made inadmissible by this provision.

18 Notwithstanding a contrary provision in the governing
19 documents, a copy of the operating budget shall be annually
20 distributed not less than 30 days nor more than 90 days prior to
21 the beginning of the association's fiscal year.

22 (b) Commencing January 1, 2009, a summary of the reserve
23 funding plan adopted by the board of directors of the association,
24 as specified in ~~Section 1365.4~~ *paragraph (4) of subdivision (e) of*
25 *Section 1365.5. The summary shall include notice to members*
26 *that the full reserve study plan is available upon request, and the*
27 *association shall provide the full reserve plan to any member*
28 *upon request.*

29 (c) A review of the financial statement of the association shall
30 be prepared in accordance with generally accepted accounting
31 principles by a licensee of the California Board of Accountancy
32 for any fiscal year in which the gross income to the association
33 exceeds seventy-five thousand dollars (\$75,000). A copy of the
34 review of the financial statement shall be distributed within 120
35 days after the close of each fiscal year.

36 (d) Instead of the distribution of the pro forma operating
37 budget required by subdivision (a), the board of directors may
38 elect to distribute a summary of the pro forma operating budget
39 to all of its members with a written notice that the pro forma
40 operating budget is available at the business office of the

1 association or at another suitable location within the boundaries
2 of the development, and that copies will be provided upon
3 request and at the expense of the association. If any member
4 requests that a copy of the pro forma operating budget required
5 by subdivision (a) be mailed to the member, the association shall
6 provide the copy to the member by first-class United States mail
7 at the expense of the association and delivered within five days.
8 The written notice that is distributed to each of the association
9 members shall be in at least 10-point boldface type on the front
10 page of the summary of the budget.

11 (e) A statement describing the association's policies and
12 practices in enforcing lien rights or other legal remedies for
13 default in payment of its assessments against its members shall
14 be annually delivered to the members not less than 30 days nor
15 more than 90 days immediately preceding the beginning of the
16 association's fiscal year.

17 (f) (1) A summary of the association's property, general
18 liability, earthquake, flood, and fidelity insurance policies, which
19 shall be distributed not less than 30 days nor more than 90 days
20 preceding the beginning of the association's fiscal year, that
21 includes all of the following information about each policy:

22 (A) The name of the insurer.

23 (B) The type of insurance.

24 (C) The policy limits of the insurance.

25 (D) The amount of deductibles, if any.

26 (2) The association shall, as soon as reasonably practicable,
27 notify its members by first-class mail if any of the policies
28 described in paragraph (1) have lapsed, been canceled, and are
29 not immediately renewed, restored, or replaced, or if there is a
30 significant change, such as a reduction in coverage or limits or an
31 increase in the deductible, as to any of those policies. If the
32 association receives any notice of nonrenewal of a policy
33 described in paragraph (1), the association shall immediately
34 notify its members if replacement coverage will not be in effect
35 by the date the existing coverage will lapse.

36 (3) To the extent that any of the information required to be
37 disclosed pursuant to paragraph (1) is specified in the insurance
38 policy declaration page, the association may meet its obligation
39 to disclose that information by making copies of that page and
40 distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: “This summary of the association’s policies of insurance provides only certain information, as required by subdivision (f) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association’s policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”

SEC. 2. Section 1365.2.5 of the Civil Code is amended to read:

1365.2.5. (a) The disclosures required by this article ~~in~~ *with* regard to an association or a property shall be summarized on the following form:

Assessment and Reserve Funding Disclosure Summary

(1) The current regular assessment per ownership interest is \$_____ per _____.

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page _____ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page ____ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association’s obligation for repair and/or replacement of major components during the next 30 years?

Yes _____ No _____

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessment will be due:	Amount per ownership interest per month or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the estimated amount required in the reserve fund at the end of the current fiscal year is \$____, based in whole or in part on the last reserve study or update prepared by ____ as of ____ (month), ____ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$____, resulting in reserves being ____% percent funded at this date. If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$____. (See attached explanation)

~~NOTE: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.~~

(7) *Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$____, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$____, leaving the reserve at ____ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$____, leaving the reserve at ____ percent funding.*

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.

(b) For the purposes of preparing a summary pursuant to this section:

(1) “Estimated remaining useful life” means the time reasonably calculated to remain before a major component will require replacement.

(2) “Major component” has the meaning used in Section 1365.5. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

~~SEC. 3. Section 1365.4 is added to the Civil Code, to read:~~

~~1365.4. (a) The board of directors of the association shall adopt a reserve funding plan that indicates how the association plans to fund the reserve account to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to fund sufficiently the reserve funding plan. The board shall revise the reserve funding plan every three years, based on the study required in subdivision (c) of Section 1365.5.~~

~~(b) An action by the board of directors regarding the reserve funding plan shall take place at an open meeting before the membership of the association as described in Section 1363.05.~~

~~(c) If the board of directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase the board adopts shall be approved in a separate action of the board that is consistent with the procedure described in Section 1366.~~

~~SEC. 3. Section 1365.5 of the Civil Code is amended to read:~~

~~1365.5. (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:~~

~~(1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.~~

1 (2) Review a current reconciliation of the association's reserve
2 accounts on at least a quarterly basis.

3 (3) Review, on at least a quarterly basis, the current year's
4 actual reserve revenues and expenses compared to the current
5 year's budget.

6 (4) Review the latest account statements prepared by the
7 financial institutions where the association has its operating and
8 reserve accounts.

9 (5) Review an income and expense statement for the
10 association's operating and reserve accounts on at least a
11 quarterly basis.

12 (b) The signatures of at least two persons, who shall be
13 members of the association's board of directors, or one officer
14 who is not a member of the board of directors and a member of
15 the board of directors, shall be required for the withdrawal of
16 moneys from the association's reserve accounts.

17 (c) (1) The board of directors shall not expend funds
18 designated as reserve funds for any purpose other than the repair,
19 restoration, replacement, or maintenance of, or litigation
20 involving the repair, restoration, replacement, or maintenance of,
21 major components—~~which~~ *that* the association is obligated to
22 repair, restore, replace, or maintain and for which the reserve
23 fund was established.

24 (2) However, the board may authorize the temporary transfer
25 of moneys from a reserve fund to the association's general
26 operating fund to meet short-term cashflow requirements or other
27 expenses, if the board has provided notice of the intent to
28 consider the transfer in a notice of meeting, which shall be
29 provided as specified in Section 1363.05. The notice shall
30 include the reasons the transfer is needed, some of the options for
31 repayment, and whether a special assessment may be considered.
32 If the board authorizes the transfer, the board shall issue a written
33 finding, recorded in the board's minutes, explaining the reasons
34 that the transfer is needed, and describing when and how the
35 moneys will be repaid to the reserve fund. The transferred funds
36 shall be restored to the reserve fund within one year of the date of
37 the initial transfer, except that the board may, after giving the
38 same notice required for considering a transfer, and, upon
39 making a finding supported by documentation that a temporary
40 delay would be in the best interests of the common interest

1 development, temporarily delay the restoration. The board shall
2 exercise prudent fiscal management in maintaining the integrity
3 of the reserve account, and shall, if necessary, levy a special
4 assessment to recover the full amount of the expended funds
5 within the time limits required by this section. This special
6 assessment is subject to the limitation imposed by Section 1366.
7 The board may, at its discretion, extend the date the payment on
8 the special assessment is due. Any extension shall not prevent the
9 board from pursuing any legal remedy to enforce the collection
10 of an unpaid special assessment.

11 (d) When the decision is made to use reserve funds or to
12 temporarily transfer moneys from the reserve fund to pay for
13 litigation, the association shall notify the members of the
14 association of that decision in the next available mailing to all
15 members pursuant to Section 5016 of the Corporations Code, and
16 of the availability of an accounting of those expenses. Unless the
17 governing documents impose more stringent standards, the
18 association shall make an accounting of expenses related to the
19 litigation on at least a quarterly basis. The accounting shall be
20 made available for inspection by members of the association at
21 the association's office.

22 (e) At least once every three years, the board of directors shall
23 cause to be conducted a reasonably competent and diligent visual
24 inspection of the accessible areas of the major components ~~which~~
25 *that* the association is obligated to repair, replace, restore, or
26 maintain as part of a study of the reserve account requirements of
27 the common interest development, if the current replacement
28 value of the major components is equal to or greater than
29 one-half of the gross budget of the association ~~which excludes,~~
30 *excluding* the association's reserve account for that period. The
31 board shall review this study, or cause it to be reviewed, annually
32 and shall consider and implement necessary adjustments to the
33 board's analysis of the reserve account requirements as a result
34 of that review.

35 The study required by this subdivision shall at a minimum
36 include:

37 (1) Identification of the major components ~~which~~ *that* the
38 association is obligated to repair, replace, restore, or maintain
39 ~~which that~~, as of the date of the study, have a remaining useful
40 life of less than 30 years.

1 (2) Identification of the probable remaining useful life of the
2 components identified in paragraph (1) as of the date of the
3 study.

4 (3) An estimate of the cost of repair, replacement, restoration,
5 or maintenance of the components identified in paragraph (1).

6 (4) An estimate of the total annual contribution necessary to
7 defray the cost to repair, replace, restore, or maintain the
8 components identified in paragraph (1) during and at the end of
9 their useful life, after subtracting total reserve funds as of the
10 date of the study.

11 (5) *A reserve funding plan that indicates how the association*
12 *plans to fund the contribution identified in paragraph (4) to meet*
13 *the association's obligation for the repair and replacement of all*
14 *major components with an expected remaining life of 30 years or*
15 *less, not including those components that the board has*
16 *determined will not be replaced or repaired. The plan shall*
17 *include a schedule of the date and amount of any change in*
18 *regular or special assessments that would be needed to*
19 *sufficiently fund the reserve funding plan. The plan shall be*
20 *adopted by the board of directors at an open meeting before the*
21 *membership of the association as described in Section 1363.05. If*
22 *the board of directors determines that an assessment increase is*
23 *necessary to fund the reserve funding plan, any increase shall be*
24 *approved in a separate action of the board that is consistent with*
25 *the procedure described in Section 1366.*

26 (f) As used in this section, "reserve accounts" means both of
27 the following:

28 (1) Moneys that the association's board of directors has
29 identified for use to defray the future repair or replacement of, or
30 additions to, those major components ~~which~~ that the association
31 is obligated to maintain.

32 (2) The funds received, and not yet expended or disposed of,
33 from either a compensatory damage award or settlement to an
34 association from any person or entity for injuries to property, real
35 or personal, arising from any construction or design defects.
36 These funds shall be separately itemized from funds described in
37 paragraph (1).

38 (g) As used in this section, "reserve account requirements"
39 means the estimated funds ~~which~~ that the association's board of
40 directors has determined are required to be available at a

1 specified point in time to repair, replace, or restore those major
2 components ~~which~~ *that* the association is obligated to maintain.

3 (h) This section does not apply to an association that does not
4 have a “common area” as defined in Section 1351.

5 SEC. 4. Section 1365.6 is added to the Civil Code, to read:

6 1365.6. Notwithstanding any other law, and regardless of
7 whether an association is a corporation, as defined in Section 162
8 of the Corporations Code, the provisions of Section 310 of the
9 Corporations Code shall apply to any contract or other
10 transaction authorized, approved, or ratified by the board or a
11 committee of the board.